UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DEDLON GELIN,	:	
Petitioner,	:	
	:	
-vs-	:	Civil No. 3:02cv1857 (PCD)
	:	
JOHN ASHCROFT, Attorney General of	:	
the United States, *et al.*,	:	
Respondents.	:	

RULING ON MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Respondents move to dismiss or in the alternative to transfer the case to the Western District of Louisiana. The motion to transfer the case to the United States District Court for the Western District of Louisiana is **granted**.

I. BACKGROUND

Petitioner is a lawful permanent resident and citizen of Haiti. On March 13, 2000, Petitioner was convicted of unlawful distribution of a controlled substance in violation of MASS. GEN. LAWS ANN. ch. 94C, § 32A(c) and was sentenced to one year on each of five counts.[1] On May 11, 2000, petitioner was notified that his conviction for violation of a law relating to a controlled substance rendered him subject to removal pursuant to §§ 237(a)(2)(A)(iii) and 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1227(a)(2)(A)(iii), 1227(a)(2)(B)(i). Petitioner sought asylum under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No.

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[1] It is not apparent from the record whether petitioner's sentence was to consecutive terms for each of the five counts or a concurrent sentence of one year for the five counts.

51, at 197, U.N. Doc. A/39/51 (1984), which request was denied on June 22, 2001 by the Immigration Judge and affirmed by the Board of Immigration Appeals on September 4, 2002.

On October 7, 2002, petitioner filed the present petition for writ of habeas corpus, seeking release from detention and a stay of deportation while his petition is *sub judice*. Petitioner's motion for stay of deportation was denied for failure petitioner's failure to demonstrate that his removal was in any way imminent. Respondent has since informed this Court of his intention to deport petitioner on February 3, 2003.

II. DISCUSSION

Respondent argues that the present petition should be dismissed as this Court lacks personal jurisdiction over petitioner's day-to-day custodian, either Caryl Thompson, District Director of the INS for the Western District of Louisiana, or the warden of the Federal Detention Center in Oakdale, Louisiana, and that no other respondent could properly be deemed a custodian of petitioner. In the alternative, respondent argues that the case should be transferred to United States District Court Western District of Louisiana as such is the only appropriate venue.

A. Dismissal for Lack of Personal Jurisdiction over Custodian

The Government argues that the Attorney General is not the proper respondent and this Court otherwise lacks jurisdiction over the proper respondents. This Court disagrees as to the characterization of the Attorney General as an improper respondent. A writ of habeas corpus is directed to the custodian of the petitioner. *See Braden v. Thirtieth Judicial Court of Kentucky*, 410 U.S. 484, 494-95, 93 S. Ct. 1123 (1973) ("The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody.") Courts should not be quick to restrict the availability of the writ premised on territorial restrictions.

> Read literally, the language of § 2241(a) requires nothing more than that the court issuing the writ have jurisdiction over the custodian. So long as the custodian can be reached by service of process, the court can issue a writ 'within its jurisdiction' requiring that the prisoner be brought before the court for a hearing on his claim, or requiring that he be released outright from custody, even if the prisoner himself is confined outside the court's territorial jurisdiction.

Id. at 495. The issue is thus whether the Attorney General is petitioner's custodian. This role has been defined by Congress by way of the immigration laws. "Congress has consistently designated the Attorney General as the legal custodian of" INS detainees. *Henderson v. INS*, 157 F.3d 106,126 (2d Cir. 1998).

Although the Government argues that the only proper respondent to a habeas petition is, in effect, the jailer, *see Yi v. Maugans*, 24 F.3d 500, 507 (3d Cir. 1994), and *Vasquez v. Reno*, 233 F.3d 688, 691 (1st Cir. 2000), such would not comport with the holding of *Braden* denying such a territorial limitation. It is further unlikely, in light of the "extraordinary and pervasive role that the Attorney General plays in immigration matters," his or her "complete charge of the proceedings leading up to the order directing the[ ] removal [of aliens] from the country," and the "complete discretion to decide whether or not removal shall be directed," *Henderson*, 157 F.3d at126 (internal quotation marks omitted), that the Attorney General could be considered an unwitting participant in habeas proceedings. The Attorney General is therefore a proper respondent over whom this court has personal jurisdiction.[2]

B. Motion to Transfer

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[2] In *Henderson*, there appeared to be no dispute as to whether the Attorney General was subject to the long-arm jurisdiction of New York. *See Henderson*, 157 F.3d at 124 n.19. The Connecticut long-arm statute contains the same language as the New York long-arm statute discussed in *Henderson*, specifically providing for jurisdiction over one who "[t]ransacts any business within the state," CONN. GEN. STAT. § 52-59b.

The Government argues petitioner has no contact with Connecticut and provides documentation of petitioner's substantial contacts with Massachusetts through both schooling and incarceration. Petitioner responds that the Government has failed to establish that he is not a resident of Connecticut and thus venue is proper in his state of residence.

Traditional rules of venue apply to habeas proceedings. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-94, 93 S. Ct. 1123, 35 L. Ed. 2d 443 (1973); *Henderson v. INS*, 157 F.3d 106, 128 n.25 (2d. Cir. 1999); *Barnaby v. Reno*, 127 F. Supp. 2d 322, 324 (D. Conn. 2001). As such, an action may be transferred to any district in which it originally may have been brought. *See* 28 U.S.C. § 1404(a). An action may be brought in the district in which plaintiff resides or in the district in which the events giving rise to the action occur. *See* 28 U.S.C. § 1391(e).

An action may be transferred "[f]or the convenience of parties and witnesses [and] in the interest of justice." *See* 28 U.S.C. § 1404(a). Relevant considerations in determining the propriety of such a transfer include: (1) the location where all material events took place, (2) the location where records and witnesses relevant to petitioner's will likely be found and (3) the convenience of the forum for both respondent and petitioner. *See* 28 U.S.C. § 1391(a),(b); *Braden*, 410 U.S. at 493-94; *Henderson*, 157 F.3d at 128 n.25. "[M]otions for transfer . . . are determined upon notions of convenience and fairness on a case-by-case basis." *Publicker Indus. Inc. v. United States (In re Cuyahoga Equip. Corp.)*, 980 F.2d 110, 117 (2d Cir. 1992). It is the movant's burden to establish its entitlement to transfer. *See Factors Etc., Inc. v. Pro Arts, Inc.*, 579 F.2d 215, 218 (2d Cir. 1978).

Although petitioner would prefer to try the matter in this forum, his position that the Government has not established that his residence is other than Connecticut is without merit. The respondent

provides evidence in the form of an application for asylum bearing his signature that demonstrates long-standing ties to Massachusetts and an absence of ties to Connecticut. In response to such a showing, petitioner must provide some tangible evidence of his ties to Connecticut. Petitioner fails to do so and rests on his allegation that he is a Connecticut resident.

Having failed to establish ties to Connecticut, potential venues are limited to Massachusetts and Louisiana. The two venues present a Hobson's choice as the First Circuit Court of Appeals holds a contrary view on whether the Attorney General is petitioner's custodian. *See Vasquez*, 233 F.3d at 691. It would serve little purpose to transfer the case to Massachusetts only to have it dismissed or transferred for lack of personal jurisdiction over the remaining respondents. As such, the United States District Court for the Western District of Louisiana is the only appropriate venue and the case is hereby transferred to that district.

C. Motion to Stay

In light of the Government's representation that petitioner's removal is imminent, the ruling denying petitioner's motion for stay of deportation (Doc. No. 4) for failure to prove imminent deportation is hereby **vacated**, and the motion is **granted** pending review of the present petition by the Court to which the case is transferred.

III. CONCLUSION

Respondent's motion to dismiss or in the alternative for transfer (Doc. No. 8) is **granted**. The case is hereby transferred to the United States District Court for the Western District of

Louisiana. The Immigration and Naturalization Service is hereby ordered to refrain from further action on petitioner's removal until such time as the Court to which this case is transferred has had an opportunity to review the petition.

SO ORDERED.

Dated at New Haven, Connecticut, January ____, 2003.

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Peter C. Dorsey
United States District Judge